



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA-2018-0165]

RIN 2126-AC01

Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: FMCSA proposes to amend its Hazardous Materials Safety Permits regulations to incorporate by reference the updated Commercial Vehicle Safety Alliance (CVSA) handbook. The Out-of-Service Criteria provide uniform enforcement tolerances for roadside inspections to enforcement personnel nationwide, including FMCSA's State partners. Currently, the regulations reference the April 1, 2016, edition of the handbook. Through this notice, FMCSA proposes to incorporate by reference the April 1, 2018, edition.

DATES: Comments on this document must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2018-0165 using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Huntley, Chief, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001 by telephone at (202) 366-9209 or by e-mail at michael.huntley@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

This notice of proposed rulemaking (NPRM) is organized as follows:

- I. Public Participation and Request for Comments
 - A. Submitting Comments
 - B. Viewing Comments and Documents
 - C. Privacy Act
 - D. Advance Notice of Proposed Rulemaking Not Required
- II. Executive Summary
- III. Legal Basis for the Rulemaking
- IV. Background
- V. Discussion of Proposed Rulemaking
- VI. International Impacts

- VII. Section-by-Section Analysis
- VIII. Regulatory Analyses
 - A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures
 - B. E.O. 13771 Reducing Regulation and Controlling Costs
 - C. Regulatory Flexibility Act (Small Entities)
 - D. Assistance for Small Entities
 - E. Unfunded Mandates Reform Act of 1995
 - F. Paperwork Reduction Act
 - G. E.O. 13132 (Federalism)
 - H. E.O. 12988 (Civil Justice Reform)
 - I. E.O. 13045 (Protection of Children)
 - J. E.O. 12630 (Taking of Private Property)
 - K. Privacy
 - L. E.O. 12372 (Intergovernmental Review)
 - M. E.O. 13211 (Energy Supply, Distribution, or Use)
 - N. E.O. 13175 (Indian Tribal Governments)
 - O. National Technology Transfer and Advancement Act (Technical Standards)
 - P. Environment (National Environmental Policy Act)

I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA-2018-0165), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2018-0165, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the

text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is customarily not made available to the general public by the submitter. Under the Freedom of Information Act, CBI is eligible for protection from public disclosure. If you have CBI that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your submission as “confidential” or “CBI.” Submissions designated as CBI and meeting the definition noted above will not be placed in the public docket of this NPRM.

Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Analysis Division, 1200 New Jersey Avenue SE, Washington DC 20590. Any commentary that FMCSA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2018-0165, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

D. Advance Notice of Proposed Rulemaking Not Required

Under 49 U.S.C. 31136(g), FMCSA is required, in part, to publish an advance notice of proposed rulemaking if a proposed rule is likely to lead to the promulgation of a major rule, unless the Agency either develops the proposed rule through a negotiated rulemaking process or finds good cause that an ANPRM is impracticable, unnecessary, or contrary to the public interest. To be a major rule, a rule must result in or be likely to result in: (1) “an annual effect on the economy of \$100,000,000 or more;” (2) “a major increase in costs or prices for consumers, individual industries, Federal, State, or local

government agencies, or geographic regions;” or (3) “significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.” 5 USC 804(2). This proposed rule does meet the criteria of a major rule because it simply incorporates by reference updates to the 2016 CVSA handbook edition made on April 1, 2017, and April 1, 2018, which, as described below, are largely editorial and provide clarity and guidance to inspectors and motor carriers transporting transuranics. Therefore, this proposed rule is not likely to lead to the promulgation of a major rule that requires an ANPRM.

II. EXECUTIVE SUMMARY

This rulemaking proposes to update an incorporation by reference found at 49 CFR 385.4 and referenced at 49 CFR 385.415(b). Section 385.4(b) currently references the April 1, 2016, edition of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403.” The Out-of-Service Criteria, while not regulations, provide uniform enforcement tolerances for roadside inspections to enforcement personnel nationwide, including FMCSA’s State partners. In this rulemaking, FMCSA proposes to incorporate by reference the April 1, 2018, edition, which also captures changes adopted in the April 1, 2017 edition of the handbook.

Cumulatively, 15 updates distinguish the April 1, 2018, handbook edition from the 2016 and 2017 editions (9 updates adopted in 2016 and 6 additional updates adopted

in 2017). The incorporation by reference of the 2018 edition does not impose new regulatory requirements.

III. LEGAL BASIS FOR THE RULEMAKING

Congress has enacted several statutory provisions to ensure the safe transportation of hazardous materials in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(d), relating to inspections of motor vehicles carrying certain hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits, the Secretary of Transportation is required to promulgate regulations as part of a comprehensive safety program on hazardous materials safety permits. The FMCSA Administrator has been delegated authority under 49 CFR 1.87(d)(2) to carry out the rulemaking functions vested in the Secretary of Transportation. Consistent with that authority, FMCSA has promulgated regulations to address the congressional mandate on hazardous materials. Those regulations on hazardous materials are the underlying provisions to which the material incorporated by reference discussed in this notice is applicable.

IV. BACKGROUND

In 1986, the U.S. Department of Energy (DOE) and CVSA entered into a cooperative agreement to develop a higher level of inspection procedures, out-of-service conditions and/or criteria, an inspection decal, and a training and certification program for inspectors to conduct inspections on shipments of transuranic waste and highway route controlled quantities of radioactive material. CVSA developed the North American Standard Level VI Inspection Program for Transuranic Waste and Highway Route Controlled Quantities of Radioactive Material. This inspection program for select radiological shipments includes inspection procedures, enhancements to the North

American Standard Level I Inspection, radiological surveys, CVSA Level VI decal requirements, and the “ North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403.” As of January 1, 2005, all vehicles and carriers transporting highway route controlled quantities of radioactive material are regulated by the U.S. Department of Transportation. All highway route controlled quantities of radioactive material must pass the North American Standard Level VI Inspection prior to the shipment being allowed to travel in the U.S. All highway route controlled quantities of radioactive material shipments entering the U.S. must also pass the North American Standard Level VI Inspection either at the shipment’s point of origin or when the shipment enters the U.S.

Section 385.415 of title 49, Code of Federal Regulations, prescribes operational requirements for motor carriers transporting hazardous materials for which a hazardous materials safety permit is required. Section 385.415(b)(1) requires that motor carriers must ensure a pre-trip inspection is performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403.”

According to 2012-2017 data from FMCSA’s Motor Carrier Management Information System (MCMIS), approximately 3.5 million Level I – Level VI roadside

inspections were performed annually. Nearly 97 percent of these were Level I,¹ Level II,² and Level III³ inspections. During the same period, an average of 842 Level VI inspections were performed annually, comprising only 0.024 percent of all roadside inspections. On average, out-of-service violations were cited in only 10 Level VI inspections annually (1.19 percent), whereas on average, out-of-service violations were cited in 269,024 Level I inspections (25.3 percent), 266,122 Level II inspections (22.2 percent), and 66,489 Level III inspections (6.2 percent) annually. Based on these statistics, CMVs transporting transuranics and highway route controlled quantities of radioactive materials are clearly among the best maintained and safest CMVs on the highways today, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported.

V. DISCUSSION OF PROPOSED RULEMAKING

Section 385.4(b), as amended on June 17, 2016 (81 FR 39587), references the April 1, 2016, edition of the CVSA handbook. This rule proposes to amend § 385.4(b), by redesignating paragraph (b) as (b)(1), and by replacing the reference to the April 1, 2016, edition date with a reference to the new edition date of April 1, 2018. Also in § 385.4(b), FMCSA clarifies that the CVSA publication is available for interested parties to view at the Agency's Washington, DC office and that the document may be purchased from the CVSA. The CVSA's website address, mail address, and phone number would be provided. Section 385.4(b) would be amended by reserving paragraph (b)(2) to

¹ Level I is a 37-step inspection procedure that involves examination of the motor carrier's and driver's credentials, record of duty status, the mechanical condition of the vehicle, and any hazardous materials/dangerous goods that may be present.

² Level II is a driver and walk-around vehicle inspection, involving the inspection of items that can be checked without physically getting under the vehicle.

³ Level III is a driver-only inspection that includes examination of the driver's credentials and documents.

accommodate additional sources of information associated with future incorporations by reference.

In addition, this rule proposes to amend § 385.4(a) to remove the paragraph header titled “Incorporation by reference.”

Section 385.415(b) would also be revised by removing paragraph (b)(2) to conform to formatting requirements of the Office of the Federal Register.

The changes made based on the 2017 and 2018 handbook editions are outlined below. It is necessary to update the materials incorporated by reference to ensure motor carriers and enforcement officials have convenient access to the correctly identified inspection criteria referenced in the rules.

April 1, 2017, Changes

Nine updates to the 2017 edition distinguish it from the April 1, 2016, edition. Additional conforming changes were made to the table of contents, but are not included in the summary below.

The first 2017 update removed the following paragraph referencing the Federal Motor Carrier Safety Regulations (FMCSRs) from the Policy Statement in Part I (North American Standard Driver Out-of-Service Criteria):

“FMCSR code references in the North American Standard Out-of-Service Criteria are simply recommendations to help inspectors find an appropriate citation. Other violation codes may be more suitable for a specific condition.”

This paragraph was removed because the conditions included in the North American Standard Out-of-Service Criteria are based on violations that exist in the FMCSRs. As data quality and uniformity are critical, any suggestion that softens a direct

linkage between an out-of-service condition and the corresponding FMCSR section has the potential to reduce the quality or uniformity of the data. The subject language was removed to lessen the possibility that an inspector might select an incorrect or a less appropriate section of the FMCSRs when documenting a violation related to the out-of-service condition. This change will not affect the number of out-of-service violations cited during Level VI inspections; rather, it simply clarifies that inspectors should cite the specific FMCSR section provided in the handbook as opposed to other, alternative violation codes.

The second and third 2017 updates amended the language in Part I, Item 4 (Driver Medical/Physical Requirements). Item 4.(b)(4) was updated to be consistent with item 4.(b)(3), and to clarify that both Item 4.(b)(3) and Item 4.(b)(4) are applicable only to individuals who are not required to possess a commercial driver's license (CDL).⁴ As written in the 2016 edition, Item 4.(b)(4) covers individuals operating a passenger-carrying vehicle for which a CDL is not required when such individuals lack the required medical certification. However, the 2016 edition omitted the term "non-CDL" when referencing the operation of a property-carrying vehicle by a driver without a valid medical certificate. The CVSA updated Item 4.(b)(4) in the 2017 edition to read "[o]perating a non-CDL property-carrying vehicle" The note to Item 4.(b)(5) was updated to clarify how roadside inspectors should handle proof of medical certification for individuals possessing a valid Provincial or Territorial license. The updated note now clearly delineates the inspection criteria when dealing with a driver presenting a Class 5 license from any Canadian jurisdiction, a Class D or G license from Ontario, or Class 3

⁴ Item 4.(b)(4) was amended again in April 2018 as discussed below.

license from New Brunswick. The change to Item 4.(b)(4) regarding non-CDL property-carrying vehicles will not affect the number of out-of-service violations cited during Level VI inspections, as all drivers transporting transuranics and highway route controlled quantities of radioactive materials are required to have a CDL. The updated note to Item 4.(b)(5) simply provides additional guidance to inspectors regarding drivers possessing Canadian licenses, and will not affect the number of out-of-service violations cited during Level VI inspections.

The fourth 2017 update added several footnotes relating to Part I, Items 9.(a)(4), (5), and (6) (Driver's Record of Duty Status – U.S.) regarding when a driver is to be placed out-of-service for having (a) no record of duty status in possession when one is required, (b) no record of duty status in possession for the previous 7 consecutive days, or (c) a false record of duty status, respectively, specifically when the driver is using or required to use an automatic on-board recording device (AOBRD) or electronic logging device (ELD). These violations relating to a driver's records of duty status have always been out-of-service violations; the new footnotes simply provide clarification to roadside inspection officials regarding when a driver is considered to have no or false records of duty status when using AOBRDs or ELDs as outlined in a December 16, 2015, final rule, effective December 2017 (80 FR 78292). FMCSA records indicate that only one out-of-service violation has been issued to a driver as a result of a Level VI inspection in the past 3 years. As such, and since the ELD rule is intended to help improve compliance with the hours-of-service rules, the addition of the footnotes to Part I, Items 9.(a)(4), (5), and (6) is not expected to have any effect on the number of out-of-service violations cited during Level VI inspections.

The fifth 2017 update removed the following paragraph referencing the FMCSRs from the end of the Policy Statement in Part II (North American Standard Vehicle Out-of-Service Criteria Inspection Standards):

“FMCSR code references in the North American Standard Out-of-Service Criteria are simply recommendations to help inspectors find an appropriate citation. Other violation codes may be more suitable for a specific condition.”

As noted with the change in the policy statement concerning the driver inspection criteria, this paragraph was removed because the conditions included in the North American Standard Out-of-Service Criteria are based on violations that exist in the FMCSRs. As data quality and uniformity are critical, any suggestion that softens a direct linkage between an out-of-service condition and the corresponding FMCSR section has the potential to reduce the quality or uniformity of the data. The subject language was removed to lessen the possibility that an inspector might select an incorrect or a less appropriate section of the FMCSRs when documenting a violation related to the out-of-service condition. This change is not expected to affect the number of out-of-service violations cited during Level VI inspections; rather, it simply clarifies that inspectors should cite the specific FMCSR section provided in the handbook as opposed to other, alternative violation codes.

The sixth 2017 update amended the language in Part II, Item 4 (Driveline/Driveshaft). Item 4.(b)(3) was updated to correct the omission of “retainer bolts” from the list of missing, broken or loose components for universal joints, and to remove the parenthetical statement, “with hand pressure only.” In the 2016 edition, Item 4.(b)(3) read: “Any missing, broken or loose (with hand pressure only) universal joint

bearing cap bolt.” As amended, Item 4.(b)(3) reads: “Any missing, broken or loose universal joint bearing cap bolt or retainer bolt.” Retainer bolts are essential to keeping the components in safe and proper operating condition. Federal and State inspectors have the training, knowledge and experience to recognize the need to place vehicles out of service when they observe missing retainer bolts. In addition, the Committee deleted the original language regarding “with hand pressure only” to maintain consistency and uniformity with the examination of other types of fasteners in the North American Standard Out-of-Service Criteria (e.g., wheel fasteners, U-bolts, fifth-wheel fasteners, etc.). FMCSA records indicate that no out-of-service violations have been issued regarding universal joints as a result of a Level VI inspection in the past 3 years, demonstrating that motor carriers transporting transuranics and highway route controlled quantities of radioactive materials ensure that this component is well maintained and in safe and proper operating condition at all times. The changes are intended to ensure clarity in the presentation of the out-of-service conditions, and are not expected to affect the number of out-of-service violations cited during Level VI inspections.

The seventh 2017 update amended Part II, Item 10.(e)(6) and (7) (Adjustable Axle(s)/Sliding Trailer Suspension System) to add language regarding missing fasteners (i.e., bolts) on sliding suspension members. The 2016 edition provided clear instructions regarding broken welds on sliding suspension members, but lacked instructions regarding missing fasteners. While trained and experienced inspectors had consistently cited the unsafe condition of missing fasteners because the fasteners perform the same function as welds, the absence of specific language in the North American Standard Vehicle Out-of-Service Criteria resulted in inconsistencies regarding the threshold for placing vehicles

out of service. FMCSA records indicate that no out-of-service violations have been issued regarding missing fasteners on sliding suspension members as a result of a Level VI inspection in the past 3 years, demonstrating that motor carriers transporting transuranics and highway route controlled quantities of radioactive materials ensure that this component is well maintained and in safe and proper operating condition at all times. The changes to Item 10.e. ensure a consistent threshold is used in determining whether the degree of non-compliance with the existing safety rules warrants placing the trailer out of service, and are not expected to affect the number of out-of-service violations cited during Level VI inspections.

The eighth 2017 update removed the paragraph referencing the FMCSRs from the Policy Statement in Part IV (Administrative Inspection Standards). As noted with the change in the policy statement for both the driver and vehicle inspection criteria, this paragraph was removed because the conditions included in the North American Standard Out-of-Service Criteria are based on violations that exist in the FMCSRs. As data quality and uniformity are critical, any suggestion that softens a direct linkage between an out-of-service condition and the corresponding FMCSR section has the potential to reduce the quality or uniformity of the data. The subject language was removed to lessen the possibility that an inspector might select an incorrect or a less appropriate section of the FMCSRs when documenting a violation related to the out-of-service condition. This change is not expected to affect the number of out-of-service violations cited during Level VI inspections; rather, it simply clarifies that inspectors should cite the specific FMCSR section provided in the handbook as opposed to other, alternative violation codes.

The last 2017 update amended Part IV by adding a new Item 2 (Inactive/No USDOT Number). This added condition addresses motor carriers that either do not have an active USDOT number or have no USDOT number, and therefore do not have the authority to operate. Given the limited number of motor carriers that transport transuranics and highway route controlled quantities of radioactive material, and the enhanced oversight and scrutiny that these carriers are subject to because of the sensitive nature of the cargo being transported, it would be highly unlikely to find a motor carrier transporting these commodities without having a USDOT number and proper operating authority. FMCSA records indicate that no out-of-service violations have been cited for motor carriers with no USDOT number as a result of a Level VI inspection in the past 3 years, and this amendment is not expected to affect the number of out-of-service violations cited during Level VI inspections.

April 1, 2018 Changes

The 2018 edition identifies (1) driver-related violations of the FMCSRs that are so severe as to warrant placing the CMV driver out of service, (2) vehicle equipment-related violations of the FMCSRs that are so severe as to warrant placing the CMV out of service, and (3) unsafe conditions in the transportation of hazardous materials. The purpose of the publication is to provide inspection criteria for Federal and State motor carrier safety enforcement personnel to promote uniform and consistent inspection procedures of CMVs operated in commerce.

Six updates to the 2018 edition distinguish it from the April 1, 2017, edition. Additional conforming changes were made to the table of contents, but those are not included in the summary below.

The first 2018 update amended Part I, Item 4.b (Driver Medical/Physical Requirements, Medical Certificate). Subsections (3) and (4) were amended to clarify and address passenger-carrying vehicles. A note was added to clarify what to do when the driver's response for the CDL is valid but the medical information is not contained in the response. In these cases, the CDL is to be considered valid with a valid medical certificate. A new subsection (6) was added regarding CDL non-excepted vehicles when the driver is self-certified as excepted intrastate or interstate. In these cases, drivers are not required to submit their medical certification to the State and therefore the information will not be tied to the driver's CDL. Additionally, this covers drivers who self-certify as exempt when they are not. In these cases, the driver must have evidence of medical certification through the State's filing or have the medical certificate in his/her possession. FMCSA records indicate that no out-of-service violations have been cited relating to medical qualifications as a result of a Level VI inspection in the past 3 years, and this amendment is not expected to affect the number of out-of-service violations cited during Level VI inspections.

The second 2018 change amended Part I, Item 4.(b) by amending the NOTE on how to handle certain Canadian licenses. Specifically, the Class 3 license from Alberta does not require a cyclical medical examination to be conducted after the initial medical examination to obtain the license in Canada until the driver is over 65 years of age. The Alberta Class 3 license was added to the list of other licenses from Canada that require further evidence of medical qualification when operating in the United States. This amendment is not expected to affect the number of out-of-service violations cited during Level VI inspections.

The third 2018 change amended Part I, Item 9 (Driver's Record of Duty Status) by amending and deleting some of the footnotes, which were added in 2017, related to electronic logging devices (ELD). Footnote 12 was amended to clarify that if the device (ELD or automatic on-board recording device) is able to produce the logs (via display, data transfer, printing or paper) during a malfunction, the driver will not be placed out of service for no record of duty status. Footnotes 14, 15, and 16 were determined to be too complex to be applied uniformly during roadside inspections and were therefore removed. Instead, FMCSA will work to address the situations outlined in those footnotes through training and inspection bulletins. This change is not expected to have any effect on the number of out-of-service violations cited during Level VI inspections.

The fourth 2018 change amended Part II, Item 1.a.(7) (Brake Systems, Hydraulic and Electric Brakes). The amendment added the term "drum" to subsection (f) to clarify that if the friction surface of the brake drum or rotor and the brake friction material on hydraulic and electric brakes are contaminated by oil, grease, or brake fluid, then that condition is considered a brake defect and subject to the 20 percent brake criterion in the Out-of-Service Criteria. This update was made to maintain consistency with drum (cam-type and wedge) air brakes. FMCSA records indicate that no out-of-service violations have been cited for oil, grease, or brake fluid contamination of brake components as a result of a Level VI inspection in the past 3 years, demonstrating that motor carriers transporting transuranics and highway route controlled quantities of radioactive materials ensure that these components are well maintained and in safe and proper operating condition at all times. This amendment is not expected to affect the number of out-of-service violations cited during Level VI inspections.

The fifth 2018 change amended Part II, Item 3.(b) (Coupling Devices, Upper Coupler Assembly (Including Kingpin)) to add a NOTE to address flat countersunk socket head cap screws. Whereas the Out-of-Service Criteria includes a chart that outlines the minimum number of bolts required on upper coupler assemblies based on the type and size of the bolt, the chart does not address the use of flat countersunk socket head cap screws that are being used by some trailer manufacturers. This can lead to vehicles being placed out-of-service for use of those screws. Until further research is conducted to determine if, or when, an out-of-service condition exists for the use of flat countersunk socket head cap screws, the amendment makes clear that the use of these fasteners is allowed, following industry practice. FMCSA records indicate that no out-of-service violations have been cited for the use of flat countersunk socket head cap screws on upper coupler assemblies as a result of a Level VI inspection in the past 3 years. This amendment is not expected to affect the number of out-of-service violations cited during Level VI inspections.

The sixth 2018 change amended Part II, Item 3.(f) (Coupling Devices, Safety Devices) to add an exception to subsection (4) to address knotted or twisted safety devices. Many drivers twist the safety chains required by § 393.70(d) of the FMCSRs for the coupling of full trailers to make them shorter so they do not drag on the ground. While knotted or twisted chains are not permitted to be used to secure cargo on a trailer, a chain that has been knotted or twisted to account for excess slack so that it does not drag on the ground is not considered to be defective and is not an out-of-service condition. FMCSA records indicate that no out-of-service violations have been cited for knotted or twisted safety devices used in coupling of full trailers as a result of a Level VI inspection

in the past 3 years. This amendment is not expected to affect the number of out-of-service violations cited during Level VI inspections.

VI. INTERNATIONAL IMPACTS

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

The CVSA is an organization representing Federal, State and Provincial motor carrier safety enforcement agencies in United States, Canada and Mexico. The Out-of-Service Criteria provide uniform enforcement tolerances for roadside inspections conducted in all three countries.

VII. SECTION-BY-SECTION ANALYSIS

Section 385.4 Matter incorporated by reference

This rule proposes to amend § 385.4(a) to remove the paragraph header titled “Incorporation by reference” to conform to formatting requirements of the Office of the Federal Register.

Section 385.4(b), as amended on June 17, 2016, references the April 1, 2016, edition of the CVSA handbook. This rule’s most significant proposed changes would amend § 385.4(b) by redesignating paragraph (b) as (b)(1), while, importantly, replacing the reference to the April 1, 2016, edition date with a reference to the new edition date of April 1, 2018. Also in revised § 385.4(b), FMCSA clarifies that the CVSA publication is available for interested parties to view at the Agency’s Washington, DC office and that

the document may be purchased from the CVSA. The CVSA's website address, mail address, and phone number would be provided. Section 385.4(b) would be amended by reserving paragraph (b)(2) to accommodate additional sources of information associated with future incorporations by reference.

Section 385.415 What operational requirements apply to the transportation of hazardous materials for which a permit is required?

Section 385.415(b) would be revised by removing paragraph (b)(2) to conform to formatting requirements of the Office of the Federal Register. The material removed, however, would continue to be contained in § 385.4 paragraphs (a) and (b); therefore, the deleted material was duplicative.

VIII. REGULATORY ANALYSES

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011). Additionally, it is not significant within the meaning of DOT Regulatory Policies and Procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) did not, therefore, review this document.

B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs

E.O. 13771, “Reducing Regulation and Controlling Regulatory Costs,” does not apply to this action because it is a nonsignificant regulatory action, as defined in section 3(f) of E.O. 12866, and has zero costs; therefore, it is not subject to the “2 for 1” and budgeting requirements.

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980 (RFA), Pub. L. 96-354, 94 Stat. 864 (1980), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 et seq.), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.⁵ In compliance with the RFA, FMCSA evaluated the effects of the proposed rule on small entities. The proposed rule incorporates by reference updates to the 2016 CVSA handbook edition made on April 1, 2017, and April 1, 2018, which, as described above, are largely editorial and provide clarity and guidance to inspectors and motor carriers transporting transuranics. DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities. None of the 15 updates from the 2017 and 2018 editions impose new requirements or make substantive changes to the FMCSRs.

When an Agency issues a rulemaking proposal, the RFA requires the Agency to “prepare and make available an initial regulatory flexibility analysis” that will describe

⁵ 5 U.S.C. 601.

the impact of the proposed rule on small entities (5 U.S.C 603(a)). Section 605 of the RFA allows an agency to certify a rule, instead of preparing an analysis, if the proposed rule is not expected to impact a substantial number of small entities. The proposed rule is largely editorial and provides guidance to inspectors and motor carriers transporting transuranics in interstate commerce. Accordingly, I hereby certify that if promulgated, this proposed rule will not have a significant economic impact on a substantial number of small entities. FMCSA invites comments from anyone who believes there will be a significant impact on small entities from this action.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions, please consult the FMCSA point of contact, Michael Huntley, listed in the **For Further Information Contact** section of this rule.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of \$161 million (which is the value equivalent to \$100,000,000 in 1995, adjusted for inflation to 2017 levels) or more in any one year. This proposed rule will not result in such an expenditure.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that no new information collection requirements are associated with this proposed rule.

G. E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

FMCSA analyzed this proposed rule and determined that it does not have implications for federalism.

H. E.O. 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in sections 3(a) and 3(b) (2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing “economically significant” rules to include an evaluation of their environmental health and safety effects on children, if the agency has reason to believe that the rule may disproportionately affect children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency

does not anticipate that this regulatory action could pose an environmental or safety risk that could affect children disproportionately.

J. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

K. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. This proposed rule does not require the collection of personally identifiable information or affect the privacy of individuals.

L. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed rule.

M. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects.

N. E.O. 13175 (Indian Tribal Governments)

This proposed rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

O. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies.

FMCSA does not intend to adopt its own technical standard, thus there is no need to submit a separate statement to OMB on this matter. The standard being incorporated in this proposed rule is discussed in detail in section IV, Incorporation by Reference, and is reasonably available at FMCSA and through the CVSA website.

P. Environment (National Environmental Policy Act)

FMCSA analyzed this rule consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1,

2004), Appendix 2, paragraph (6)(b). This Categorical Exclusion (CE) covers minor revisions to regulations. The content in this proposed rule is covered by this CE, there are no extraordinary circumstances present, and the proposed action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the Regulations.gov Web site listed under ADDRESSES.

List of Subjects

49 CFR 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA amends 49 CFR chapter III, part 385, as set forth below:

PART 385--SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113 13901-13905, 13908, 31135, 31136, 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103-311; Sec. 408, Pub. L. 104-88, 109 Stat. 803, 958; Sec. 350 of Pub. L. 107-87, 115 Stat. 833, 864; and 49 CFR 1.87.

2. Revise § 385.4 to read as follows:

§ 385.4 Matter incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, FMCSA must publish notification of the change in the FEDERAL REGISTER and the material must be available to the

public. All approved material is available for inspection at Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Ave., SE, Washington, DC 20590; Attention: Chief, Compliance Division at (202) 366-1812, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030 or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(b) Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770, telephone (301) 830-6143, www.cvsa.org.

(1) “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR § 173.403,” April 1, 2018, incorporation by reference approved for § 385.415(b).

(2) [Reserved]

§ 385.415 [Amended]

3. Remove and reserve § 385.415(b)(2) .

Issued under authority delegated in 49 CFR 1.87 on: December 20, 2018.

Raymond P. Martinez

Administrator

[FR Doc. 2018-28169 Filed: 12/28/2018 8:45 am; Publication Date: 12/31/2018]